Follow-up Questions and Action Items:

5/30/07 Technical Advisory Group Meeting:
WQIF Cost Control Measures – Policies and Guidelines Development

1. Question: *Does SB 771/HB 1710 allow DEQ to require that the least-cost alternative (based on life cycle cost analysis) be the selected option, unless otherwise justified by the owner?*
   Response: The legislation's list of potential cost control measures includes, "(v) the ability to limit or exclude reimbursements based upon a **life-cycle cost evaluation**". Our reading of this language is that:
   - "Reimbursement" is synonymous with "grant award".
   - **Yes**, the grant award may be limited to the least-cost alternative, assuming it is a feasible option, and there are no justifiable reasons for the plant owner to exclude it. This doesn't mean the grantee can't select and construct the more costly alternative; just that grant eligibility will be based on the lower cost option.

   A proposal to be discussed by the TAG is requiring a life-cycle cost analysis beyond the overall NRT system selection in the Preliminary Engineering Report, to focus on individual units and technology options, and also describe the limitations on grant award that may result.

2. Question: Regarding the applicability of the **VA Public Procurement Act**, *Can/should the State pre-purchase equipment/units (i.e., receive a volume discount)?*
   Response: This is viewed as a responsibility of the owner and can be accomplished cost-effectively through direct purchase from equipment vendors prior to construction or use of "or equivalent" substitutes in bid documents.

3. Action Item: Regarding **Design-Build**, a proposal to be discussed by the TAG is advocating its use in the revised cost control measures in GM #06-2012. Support for design-build, as an alternative to the usual (and "preferred") competitive bidding process, is contingent on the "public body other than the Commonwealth" securing approval from the Design-Build/Construction Management Review Board, pursuant to VA Code § 2.2-2406. Staff is attempting to secure additional documentation from the Department of General Services regarding this approach, such as guidelines, model ordinances, and Div. of Engineering and Buildings contact information.

4. Action Item: Regarding **Value Engineering**, a proposal to be discussed by the TAG is requiring VE analysis when a project's capital cost estimate for the nutrient reduction technology portion is equal to or greater than some select threshold. Options could include levels of $5, $10, or $20 million. The $5 million level is consistent with VA Code requirements for capital outlay projects by State agencies. Higher values may be preferred because of greater opportunities for relative cost savings, given the expense of the VE analysis which is based on a somewhat fixed level of effort. Regardless of the threshold chosen, a grantee could perform a VE analysis if the NRT cost estimate is lower, but this would be optional.

5. Regarding **nutrient credit trading**, the following concepts were discussed:

a. Question: *How can the Compliance Plans, due August 2007 under the Watershed General Permit Regulation, and the WQIF be better integrated?*
Response: DEQ Water Permit and CBP staff has already begun close coordination in reviewing the NCEA's 5/31 draft Compliance Plan. Comparisons are being made between the design flows used to set nutrient waste load allocations and concentration limits in WQIF agreements vs. owner-furnished survey information to the NCEA on flows and concentrations, schedules for upgrades, and projected loads and available credits. One cost control measure to be considered is deferring a WQIF project that would contribute a relatively small load reduction in a basin that has excess credits, assuming the project isn't needed to secure a design flow expansion needed by 2011 or satisfy other compliance issues. There might be tradeoffs to consider (e.g., perhaps less environmental improvement; the reality of non-point source controls lagging in Tributary Strategy implementation).

b. Question: *Should the grant agreement include a condition that the grantee (who is also a member of the NCEA) must offer Class A credits, generated as the result of a WQIF-funded project, until capacity issues arise?*
Response: Participation in both the credit exchange program and WQIF grant program is optional and voluntary. However, once an owner signs a WQIF grant agreement this enforceable document can require certain items such as effluent concentration limits and stipulated monetary assessments for non-performance. Therefore, a proposal to be discussed by the TAG is mandating the availability of Class A credits, if their generation result from a grant-funded NRT project and the grantee is a member of the NCEA. This clause would be added to the revised cost control measures in GM #06-2012 or as a WQIF grant agreement provision. Certain other conditions could also apply, such as the plant not being notified by DEQ that they are subject to the "95% flow policy" (3 consecutive months with influent flows equal to or higher than 95% of the plant's certified design capacity), so that the facility is operating below its design flow, thereby generating credits with good performance.

c. Question: *As an incentive to owners obligating Class A credits, can WQIF funds be used to cost-share credits purchased by owners willing to defer upgrades?*
Response: This proposal may have merit; however, since the DEQ Director is currently authorized to make grants "solely for the design and installation of nutrient removal technology", a legislative change in the Water Quality Improvement Act would be required to specify use of funds for this purpose.

d. Question: *Should grant agreements be prioritized on a common unit value (i.e., $/pound or $/million gallons treated) to allow the most "bang for the buck"?*
Response: These unit values might be useful in the decision making under item 5.a. above (deferring projects in a basin with excess credits).

e. Question: *Should plants not currently discharging be bypassed for grant funding (i.e., given low prioritization) because there is no existing water quality benefit?*
Response: Staff has reviewed the list of pending applications, and only one current project involves construction of a "new" plant, which is likely to involve consolidation of one other discharging plant into a regional facility. There are other "new" facilities that were given nutrient waste load allocations in the WQMP Regulation because they were expected to be certified for operation by Dec.

2010 but have not yet applied for a grant. Also, there is one existing plant in the significant discharger list not currently discharging and not eligible for WQIF funds (industrial).

6. **Other issues:**
   a. Question: *Should the WQIF agreement allow for escalation costs/factors, with a "not-to-exceed" cap on total project cost? Incentives might be built-in to a construction contract whereby the contractor shares in a percentage of any capital savings at the end of a project.*
   Response: The WQIF will reimburse a grantee for actual costs expended on grant-eligible items. It is doubtful that funds could be used for "cost-avoidance" incentives, but this is an option the grantee might use involving just local funds.

   b. *It was also suggested that breaking the project into smaller divisions or use of a phased approach with third party construction management may enable more bidders and lessen the total cost.*
   Response: The program is already anticipating use of this approach in order to "phase" the NRT installation and will work with grantees to secure incremental and, in some cases, conditional CTOs for work completed. However, incorporating this approach into the cost-control guidelines is worthwhile.